THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.1609 OF 2006

Dated: 20th July, 2006.

Between:

1.D. Balaji and another … Petitioners

And

1. The General Manager, South Central Railways,
   Rail Nilayam, Secunderabad and 3 others. … Respondents

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WRIT PETITION NO.1609 OF 2006

ORDER :

The petitioners herein were granted licences by the respondents to run STD/ISD/PCO booths in the various Railway stations. Though the licences were initially granted for one year, the same were extended from time to time and the petitioners claim that their licences are valid upto 27-4-2007. While so, the respondents by order dated 5-8-2005 terminated the licences on the ground of alleged violation of the conditions of licence. Aggrieved by the same, the petitioners filed a writ petition and the same was disposed of by this Court holding that the orders of termination which were passed without issuing any prior notice to the petitioners were unsustainable. Accordingly, the petitioners were directed to treat the orders of termination dated 5-8-2005 as show-cause notices and submit their explanations within 10 days, and thereafter, the respondents were at liberty to pass appropriate orders. In pursuance thereof, the petitioners submitted their explanations denying the alleged violation of the conditions of licences. However, the respondents passed the impugned orders dated 17-1-2006 terminating the licences of the petitioners which are under challenge in this writ petition.

I have heard the learned Counsel for both the parties and perused the material on record.

The order of termination dated 5-8-2005 which was the subject-

matter of earlier writ petition may be extracted hereunder:

> *"The performance of the booth has been reviewed and Railway administration has decided to terminate your contract on account of un-satisfactory performance as you have been operating second telephone line with any approval and also failed to pay necessary additional commission to the railway administration. While stating the amounts in a tabular form the petitioners were asked to vacate the premises on or before 31-8-2005."*

As can be seen, the termination was based on two allegations namely (1) unsatisfactory performance as the petitioner have been operating 2nd telephone line without any approval; and (2) failure to pay necessary additional commission to the railway administration.

By virtue of the order of this Court in the earlier writ petitions, the order dated 5-8-2005 was treated as a show-cause notice and the petitioners submitted their explanations stating that as per the revised policy issued by the Government of India, Ministry of Railways, dated 28-4-2000, PCO/STD/ISD booth-holders were permitted to run two telephones in one booth. Since then, the petitioners were permitted to install two telephones. Again in the policy dated 22-4-2002 the Government of India reiterated that the licensees are entitled to operate two telephones. Accordingly, the petitioners have been operating two telephone connections and have been paying commission for the two connections as demanded by the respondents, which shows that the 2nd telephone connection has been approved. Since the 2nd telephone connection was allowed by the Government of India vide policies of the years 2000 and 2002 and since the respondents have been demanding the commission for 2nd connection also and receiving the same regularly, the allegation of unsatisfactory performance is incorrect and without any basis. The petitioners had also denied the alleged non-payment of additional commission and brought to the notice of the respondent that they had

promptly paid the amounts demanded in the orders dated 5-8-2005.

The petitioners alleged that the respondents failed to appreciate the said explanations and passed the impugned orders of termination mechanically, which runs as under :

> *"In term of Railway Board Policy, the STD/PCO booth owners are required to pay the commission as per the number of connections operated by the operator (maximum two). In this case, however, you not only failed to take prior approval from Railway administration, but also failed to intimate and pay for the second connection. It was only after this irregularity detected by the Railway administration that these charges were forced upon you for payment.*
>
> *It is thus, very clear that you were operating the second connection without paying additional commission.*
>
> *It is therefore, decoded by Railway administration to terminate the contracts on account of un-satisfactory performance w.e.f. 31-1-2006. You are advised to comply the instructions and clear structure from the Railway premises duly clearing all electrical and commercial dues and obtain clearance certificate from SS/Gaz/SC."*

On behalf of the respondents, the Senior Divisional Manager, Secunderabad filed a counter-affidavit stating that as per the letter of Railway Board, dated 11-3-2005, the licences held by the physically-handicapped persons may be extended upto 27-4-2007 provided their working is satisfactory. Accordingly, review was conducted in the Month of April/May, 2005. Out of 30 licensees, 15 licensees including the petitioners herein were found to have violated the terms and conditions of the licence. Hence, the licences were terminated vide orders dated 5-8-2005. In compliance with the orders of this Court, the said orders were treated as show-cause notices and the explanations received from the petitioners were considered and since the same were not satisfactory, the impugned orders were passed. It is further stated that the respondents have issued tender notification dated 21-9-2004, which was challenged by the STD/PCO Booth Operators

Welfare Association by filing W.P.No.19411 of 2004, but the same was dismissed by this Court by order dated 19-10-2004 permitting the members of the petitioner association to continue in pursuance of the policy decision of the respondents upto 27-4-2005 subject to conditions mentioned in the policy decision dated 20-5-2002. The petitioners who failed to participate in response to the tender notification dated 21-9-2004 and who are not entitled for renewal under the policies of the Government of India of the year 1998 and 2002 do not have any right to continue the operation of the booths. The writ petition is therefore liable to be dismissed.

On a perusal of the material placed before this Court, it is clear that the petitioners herein were allotted the booths in question as per the policy of the Union of India under the category of Physically-handicapped persons. Though initially the allotments were made only for a period of one year in the year 2000, admittedly the petitioners are being continued till today.

The Union of India, Ministry of Railways vide proceedings dated 11-3-2005 decided that Physically-handicapped persons who were running STD/ISD/PCO booths at railway stations and whose contracts were expiring and which were not due for extension will be allowed to continue and their contract may be extended after expiry upto 27-4-2007. Similarly, by proceedings dated 25-5-2005 it was decided that in respect of persons other than physically-handicapped whose total period of contract as on 27-4-2005 is less than 10 years may be extended till such period when the total period of contract comes to 10 years or till 27-4-2007 whichever is earlier.

As per the said Policy Guidelines, the period of contract in favour of the physically-handicapped persons as well as the other persons are to be extended upto 27-4-2007. The fact that the petitioners are being continued in the absence of any specific order of extension itself shows that the contracts in favour of the petitioners

stood extended automatically in terms of the policy guidelines. It is true that the extension is subject to satisfactory work by the allottees, however nothing has been placed before this Court to show that there were any allegations of unsatisfactory performance by the petitioners earlier. For the first time the respondents issued the notice-cum-termination order on 5-8-2005 making certain allegations against the petitioners. As noted above, the said orders were directed to be treated as show-cause notices by virtue of the order of this Court in the earlier writ petition and the petitioners had clearly explained all the allegations in their explanations. The order dated 5-8-2005 which contained two allegations was already extracted above. One of the objections that the second telephone connection was being operated by the petitioners without approval of the respondents, on the face of it appears to be untenable since under the policy guidelines of the years 2000 and 2002, all the allottees were permitted to run two telephones in one booth. Nothing has been mentioned in the said guidelines that the same requires any prior approval of the respondents.

The specific case of the petitioners is that from 2000 onwards they have been operating two telephones and has been paying the commission and other charges regularly to the respondents. Prior to the order dated 5-8-2005, since the respondents never raised any demand for the alleged arrears of commission charges, I do not find any reason to disbelieve the version of the petitioners. At any rate, it is admitted by the respondents that as on today the petitioners are paying the commission and other charges regularly.

Though normally this Court declines to entertain a dispute based on a contract, it is well-settled that it is not an absolute bar and in appropriate cases, particularly where the matter does not involve serious disputed questions of fact which require consideration of evidence, the writ petition can be maintained under Article 226 of the

Constitution of India.

At any rate, the petitioners being physically-handicapped persons and having regard to the fact that as on today there are no arrears and the respondents never raised any objection till 5-8-2005, I am of the opinion that the impugned orders of termination which were devoid of reasons and appear to have been passed without application of mind to the explanations offered by the petitioners cannot be sustained. Accordingly, the same are set aside. However, this shall not preclude the respondents to initiate fresh proceedings in case necessity thereof arises against the petitioners following due process of law.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 20-07-2006

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THE HON'BLE Ms. JUSTICE G. ROHINI

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